RECORD.

OF THE UNITED STATES

1874

APPELLANT.

v.

STATES.

COURT OF CLAIMS.

SUPREME COURT OF THE UNITED STATES.

No. 293.

JOHN E. REESIDES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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Petition.

To the honorable the Judges of the Court of Claims:

The petition of John E. Reeside, a resident of the city of Washington, in the District of Columbia, and a loyal citizen of the United States, respectfully sheweth to your honors:

That your petitioner entered into and concluded with che United States government, through its duly empowered and legally authorized agent, the Postmaster General, six distinct and independent contracts or agreements, to transport and carry the mails of the United States, on the several post-routes established by law, and hereinafter described, with the usual conditions customary in this class of government contracts.

On route, designated as number 7,560, from Natchez, in the State of Mississippi, by Kingston and Cold Spring, to Woodville and back, twice a week, at the yearly compensation of eighteen hundred dollars, commencing on the first day of April, A. D. 1859, and ending with the thirtieth day of June, A. D. 1862.

On route number 7,574, from Natchez aforesaid, by Washington, Hamburg, Meadville, McCall's Creek, and Friendship, to Brookhaven and back, three times per week, at the yearly compensation of forty-two hundred and eighteen dollars, for the period of
2 time commencing on the first day of November, A. D. 1860, and ending with the thirtieth day of June, A. D. 1862.

On route number 7,812, from Little Rock, in the State of Arkansas, by Palermo, Greengrove, Lewisburg, Hebron, Clarksville, Horsehead, Ozark, Pleasant Hill, and Van Buren, to Fort Smith and back, three times per week, at the annual compensation of eleven thousand nine hundred and seventy dollars, for the period to commence with the tenth day of October, A. D. 1859, and ending with the thirtieth day of June, A. D. 1862.

That by a subsequent order of the Postmaster General, bearing date the 5th day of March, A. D. 1860, the rate of speed and time of performance was changed, and increasing the annual compensation to the rate of seventeen thousand nine hundred and forty dollars. That, by a further order of the Postmaster General, bearing date the fifteenth day of March, A. D. 1861, three additional trips per week were required to be performed on said route, with an increase of compensation, at the yearly rate for the whole service of thirty-five thousand eight hundred and eighty dollars.

On route number 7,842, from Helena, in the State of Arkansas, by Lagrange, Beech Grove, Mariana, Langueill, Calvert, Madison, Wittsburgh, Coldwater, Farm Hill, Harrisburg, Gouldsboro, Jonesboro, Greensboro, and Campabello, to Gainsville and back, once a week to Madison, and three times per week on the residue of said route, at the yearly compensation of forty-one hundred and thirty-two dollars, for the period of time commencing on the first day of January, A. D. 1861, and ending with the thirtieth day of June, A. D. 1862.

On route number 8,240, from Natchez, in the State of Mississippi, by Trinity and Harrisburgh and back, six times a week, in four-horse coaches, at the yearly compensation of twelve thousand dollars, to commence on the first day of October, A. D. 1858, and ending with the thirtieth day of June, 1862.

In addition to the aforesaid contracts, your petitioner, for a valuable consideration by him paid, became the assignee of a portion of the contract on route number 8,207, from Alexandria to Shreveport, in the State of Louisiana, made with James B. Price; said contract commencing with the first day of July, A, D. 1859, and ending with the thirtieth day of June, A. D. 1862. The interest of your petitioner was the quarterly allowance of five hundred and seventy dollars, and which sum had regularly been paid by the Post
3 Office Department to your petitioner, under a power of attorney and assignment from said Price, with the knowledge and approbation of the Department, a copy of which is hereunto annexed. Copies of said contracts and orders of the Postmaster General increasing the service and speed on route number 7,812, are hereunto annexed, and made a part of this petition.

Your petitioner avers, that on his part he faithfully kept and performed his said several contracts, and caused the same to be duly kept and performed in each and every particular, and duly and regularly received the compensation agreed to be paid thereon, up to and including the last day of May, A. D. 1861, amounting in the aggregate to the yearly rate of sixty thousand three hundred and ten dollars. That for the remaining period of thirteen months of time which said contract had to run, the entire compensation to your petitioner would amount to the sum of sixty-five thousand three hundred and ten dollars.

That the Postmaster General, on the 27th day of May, A. D. 1861, claiming to act under and by virtue of the authority conferred upon him by the act of Congress, approved Feb. 28, A. D. 1861, by a general order, bearing date said 27th day of May, and by subsequent special orders, entered in each of the contract routes of which your petitioner was the contractor, suspended the service on each and all of said routes until further orders.

That the Postmaster General declined and refused to terminate said contracts, under the clause in each of said contracts, whereby your petitioner might claim and be entitled to receive the amount of one month's pay, as liquidated damages. That the Postmaster General declined and refused to terminate the contracts generally, upon the part of the government, for the unexpired time of thirteen months, which they had to run.

That the Postmaster General, while he suspended the service merely for the time being, held your petitioner liable to resume the service at any moment the pleasure of the Department, the interest of the government, or the condition of the country might render it desirable. In no respect relieving your petitioner or his sureties from any portion of his contract responsibilities, whereby your petitioner had all the legal consequences of his contracts resting upon him.

Your petitioner therefore claims, as he is advised by counsel that he well may, the full and entire amount of his mail pay for
4 the unexpired term of his contracts, which he avers to be the sum of sixty-five thousand three hundred and ten dollars. For which sum the United States, being justly indebted to him, in consideration of said indebtedness, promise to pay him that sum on demand.

Your petitioner does further aver, and for the purpose of presenting his claim in such a light that the honorable Court may administer to him such relief as he may by law be entitled to receive, that his prospective profits, over and above any necessary expense he might incur in the performance of said service, for the remaining time they had to run, would have been on route 7,574, $994 50; on route 7,560, $325; on route 7,842, $576 33; on route 8,240, $6,500; on route 7,812, $12,935; on route 8,207, $2,329 16; and that the basis of this averment is the profits he actually received, per annum, for the time the contracts were executed, over and above all necessary and proper expenses incurred in and about the same.

Your petitioner does further aver, that he being a resident of the city of Washington, and a contractor for carrying the mails in the States of Mississippi, Louisiana, and Arkansas, as aforesaid, that he was entitled to receive a reasonable notice before suspending the mail service on the several routes where he was the contractor, taking into consideration the distance from the seat of government to the place of service; and that he is justly and fairly entitled, at all events, to his mail pay up to such length of time as may be
5 regarded just and reasonable for that purpose, which he avers to be one month and $4,728 33.

That the Postmaster General, though thereunto specially requested, has refused to make your petitioner compensation for the losses he has sustained under his aforesaid contracts, or to afford him any compensation whatever; that your petitioner has, at all times, borne true allegiance to the government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the same; that no assignment or transfer of said claims have been made to any person; that the sum claimed by him is justly due; and that no credits or offsets in favor of the United States exist against him.

J. E. REESIDE.

T. J. D. FULLER,
Solicitor for Claimant.

P. O. address: Washington City.

DISTRICT OF COLUMBIA, *Washington City, ss:*

On this 2d day of November, A. D. 1863, personally came before me, the subscriber, a notary public, John E. Reeside, who subscribed the foregoing petition, and made solemn oath that the matters and things therein set forth, according to his best knowledge and belief, are just and true; that he at all times has borne true allegiance to

the government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the United States government; that he is justly entitled to the amount he claims from the United States, and that no counter claims or offsets in favor of the United States exist against him.

N. CALLAN,
Notary Public.

6 In the Court of Claims.

October term, 1863.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No.

And now come the United States, by Charles Gibson, their solicitor, and say that they are not indebted to the said claimant in the said sum of $65,310 00, or any part thereof.

Jan. 11, 1864.

CHARLES GIBSON,
Solicitor for U. S.

7 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,963.

And now, to wit, 15th day of May, 1867, the Court, upon due consideration of the premises, do order, adjudge, and decree, that the said claimant take nothing by his suit, and that the said petition be dismissed.

BY THE COURT.

At a Court of Claims held at the Capitol, in the city of Washington, on Monday, the 20th day of May, A. D. 1867.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,963.

Mr. Fuller comes, per the claimant, filed in this case a petition for an appeal to the Supreme Court of the United States, from the judgment entered therein on the 15th of May last, whereupon it was ordered that the petition be allowed.

8 JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,963.

The finding of the facts in this case by the Court of Claims, and the conclusions of law on said facts, on which the Court finds its judgment.

Upon the hearing of the above-entitled cause, the Court found the following facts:

1. That on the 27th of May, 1861, the claimant, John E. Reeside, was a contractor for carrying the mail on the several mail routes set forth in the petition, upon a contract for each route made between him and the United States, which expired on the 30th June, 1862. A copy of the contract for route No. 7,812, is hereto annexed, and the other contracts were similar, except as to route price and schedule.

2. The prices on the several routes were as follows:

On route No.	7560	$1,500	per year.
" "	7574	4,218	"
" "	7812	11,970	"
" "	8240	12,000	"
" "	7812	35,880	"

3. That the claimant has been paid in full on each of said routes up to the first day of June, 1861.

4. That on the 27th day of May, 1861, the Postmaster General issued the following order.

POST OFFICE DEPARTMENT,
Washington, May 27, 1861.

All postal service in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Texas, will be suspended from and after the 31st instant.

Letters for offices temporarily closed by this order, will be forwarded to the Dead Letter Office, except those for Western Virginia, which will be sent to Wheeling.

M. BLAIR,
9 *Postmaster General.*

The order suspending the service on route 7,570, is as follows:

"Suspend service until further ordered, from and after May 31, 1861, (per Postmaster General's printed notice of this date, acting under law of Congress, of February 28, 1861.)

Dated May 28th, 1861.

And the same order is attached to routes 7,574, 7,812, 7,842, and 8,240.

5. That no part of the stage property was removed by the claimant from the mail routes. And in the spring of 1861, he requested the Postmaster General to annul his contracts. This was refused, and the claimant was informed by the Postmaster General that he would be held responsible, and be ordered to renew the service, whenever in the opinion of the Postmaster General it should be safe to do so.

6. That the claimant resided in Washington, D. C., in May, 1861, and has since resided there. That it would have required twenty days to have gone to Arkansas from Washington, and disposed of the

claimant's stage property on those routes, and no special notice was ever served upon him of the discontinuance of the mail routes specified in his said contracts.

7. That early in 1861, the States of Louisiana and Mississippi had passed ordinances of secession, and had joined with other seceding States in setting up a provisional central government, in hostility to the government of the United States. That Arkansas was admitted into this rebel confederacy on the 21 May, 1861, and that from and after the proclamation of the President of the United States on the 15th of April, 1861, a state of actual war existed between the United States and the States setting up this provisional government, and in which these contracts were to be executed. That all payments on the said contracts for the unexpired terms thereof, from May 31, 1861, tho' requested, have been refused to him by the defendants.

And upon the facts stated the Court was equally divided in opinion as to the claimant's right to recover, and thereupon his petition was dismissed.

10¼ WASHINGTON, D. C.

No. 7,812. $11,970 per annum.

This article of contract, made the thirteenth day of December, in the year one thousand eight hundred and fifty-nine, between the United States (acting in this behalf by their Postmaster General) and John E. Reeside, and J. C. Beman & E. S. Alvord sureties.

Witnesseth, that, whereas, John E. Reeside, has been accepted, according to law, as contractor for transporting the mail on route No. 7,812, from Little Rock, Ark., by Palarm, Green Grove, Lewisburg, Hebron, Galley Creek, Norristown, Russellville, Pittsburg, Clarksville, Horse Head, Ozark, Pleasant Hill, and Van Buren to Fort Smith and back, three times a week, with "certainty, celerity, and security," using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size or weight, at eleven thousand nine hundred & seventy dollars per year, for and during the term commencing the fourth day of January, in the year one thousand eight hundred and sixty, and ending with the thirtieth day of June, in the year one thousand eight hundred and sixty-two. Now, therefore, the said contractor, and his sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves—

1st. To carry said mail within the times fixed in the annexed schedule of departures and arrivals, except that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to what is given in the schedule; and so carry until said schedule is altered by the authority of the Postmaster General of the United States, as hereinafter provided, and then to carry according to said altered schedule. 2d. To carry said mail in a safe and secure manner, free from wet or other injury, under a sufficient oil cloth or bearskin, if carried on horse, and in a boot under the driver's seat, if carried in a coach

or other vehicle, and in the preference to passengers, and to their entire exclusion if its weight and bulk require it. 3d. To take the mail and every part of it from, and deliver it, and every part of it, at each post-office on the route, or that may hereafter be established on the route, and into the post-office at each end of the route, and into the post-office at the place at which the carrier stops at night, if one is there kept; and if no office is there kept, to lock it up in some secure place at the risk of the contractor.

They also undertake, covenant, and agree with the United States, and do bind themselves jointly and severally as aforesaid, to be answerable for the person to whom the said contractor shall commit the care and transportation of the mail, and accountable to the United States for any damages which may be sustained by the United States through his unfaithfulness or want of care; and that the said contractor will discharge any carrier of said mail whenever required to do so by the Postmaster General; also, that he will not transmit by himself or his agent, or be concerned in transmitting commercial intelligence more rapidly than by mail, and that he will not carry out of the mail, letters or newspapers which should go by post; and further, the said contractor will convey, without additional charge, post-office blanks, mail locks, and bags, also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used.

They further undertake, covenant, and agree with the United States, that the said contractor will collect quarterly, if required by the Postmaster General, of postmasters on said route, the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlement of quarterly accounts, and will pay over to the General Post-Office all balances remaining in his hands.

For which services, when performed, the said John E. Reeside, contractor, is to be paid by the said United States, the sum of eleven thousand nine hundred & seventy dollars a year, to wit: Quarterly, in the months of May, August, November, and February, through the postmasters on the route, or othewise, at the option of the Postmaster General of the United States; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended in case of delinquency.

10½ It is hereby stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required, or for the increased speed, if the employment of additional stock or carriers is rendered necessary; but the contractor may, in case of increased expedition, relinquish the contract on timely notice, if he prefer it to the change; also, that the Postmaster General may discontinue or curtail the service in whole or in part, in order to place on the route a greater degree of service, or whenever the public interests requires such discontinuance or curtailment:

for any other cause; he allowing one month's extra pay on the amount of service dispensed with.

It is hereby also stipulated and agreed, by the said contractor and his sureties, that in all cases there is to be a forfeiture of the pay of a trip when the trip is not run; and of not more than three times the pay of the trip when the trip is not run, and no sufficient excuse for the failure is furnished ; a forfeiture of at least one-fourth part of it when the running is so far behind time as to lose connection with a depending mail; and a forfeiture of a due proportion of it when a grade of service is rendered inferior to the mode of conveyance above stipulated; and that these forfeitures may be increased into penalties of higher amount, according to the nature or frequency of the failure, and the importance of the mail; also, that fines may be imposed upon the contractor, unless the delinquency be satisfactorily explained to the Postmaster General in due time, for failing to take from or deliver at a post-office the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury, by being wet, or otherwise; for entrusting the mail to the carrier under sixteen years of age; for refusing, after demand, to convey a mail by any conveyance which the contractor regularly runs or is concerned in running on the route, beyond the number of trips above specified, or for not arriving at the time set in the schedule. And for setting up or running an express to transmit letters or commercial intelligence in advance of the mail, or for transporting knowingly, or after being informed, any one engaged in transporting letters or mail matter in violation of the laws of the United States, a penalty may be exacted of the contractor equal to a quarter's pay; but in all other cases no fine shall exceed three times the price of the trip. And whenever it is satisfactorily shown that the contractor, his carrier or agent, has left or put aside the mail, or any portion of it, for the accommodation of passengers, he shall forfeit not exceeding a quarter's pay.

And it is hereby further stipulated and agreed, by the said contractor and his sureties, that the Postmaster General may annul the contract for repeated failures; for violating the Post Office Laws; for disobeying the instructions of the Department; for refusing to discharge a carrier when required by the Department; for assigning the contract without the consent of the Postmaster General; for setting up or running an express as aforesaid; or for transporting persons conveying mail matter out of the mail as aforesaid; or whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress, passed on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster General, has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals, the day and year set opposite their names respectively.

Signed, sealed, and delivered, by the Postmaster General, in the presence of—

——— ———.

——— ———.

——— ———,
Postmaster General.

And by the other parties hereto, in the presence of—

——— ———.

——— ———.

I hereby certify, that I am well acquainted with ——— ——— and ——— ———, and the condition of their property, and that after full investigation and inquiry I am well satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

——— ———,
Postmaster at ———.

10¾ The schedule of departures and arrivals.

Leave Little Rock Monday, Wednesday, and Friday, at 4 a. m.
Arrive at Fort Smith in 114 hours, by 10 p. m.
Leave Fort Smith, Monday, Wednesday, and Friday, at 4. a. m.
Arrive at Little Rock in 114 hours, by 10 p. m.

11 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,963.

I, Sam'l H. Huntington, Chief Clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the proceedings in the above-entitled cause, and of the final judgment of the Court thereon; of the order of the Court allowing an appeal to the Supreme Court of the United States, and of the finding of the facts in the case by the Court of Claims, and the conclusions of law in said facts on which the Court founds its judgment.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 13th day of September, A. D. 1867.

[SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

SUPREME COURT OF THE UNITED STATES.

No. 144.

DECEMBER TERM, 1868.

JOHN E. REESIDE, APPELLANT, vs. THE UNITED STATES.

BRIEF FOR THE APPELLEE.

In this case the appellant appears as a contractor for carrying the mails on several routes within the States of Mississippi, Louisiana and Arkansas. These contracts would have expired June 30, 1862. The appellant, in his petition to the Court of Claims, complains of an order of the Postmaster General of May 27, 1861, suspending all postal service in the then ten seceded States, including the three above named, within which the routes covered by the appellant's contracts lay. A similar order was issued for each route. The suspension was to commence June 1, 1861, and by the special orders was to remain "until further ordered." Upon this order, as a breach of his contracts, the appellant's case rests.

So far, however, from showing that this order caused him any damage whatever, the case shows, and this court would take knowledge of the fact without such showing, that from the 15th day of April, 1861, six weeks before the date of the order complained of, "a state of actual war existed between the United States and the States (with others) * * * in which these contracts were to be executed."

Thus it appears that, before the order suspending the service on these contracts was issued, their execution had become actually impossible, by reason of the above existing war. The mail which the appellant agreed to carry was the United States mail; none other. The United States mail could not be carried in territory occupied by the enemies of the United States.

The order of suspension was a mere recognition on the part of the Post Office Department of this state of war, such as released the appellant from any further fruitless endeavor to execute his contracts, until further notice from that department.

As further cause of damage the appellant alleges that "the Post-

master General declined and refused to terminate said contracts under the clause in each of said contracts," whereby the petitioner might claim one month's pay, as liquidated damages; and that further, while suspending the service merely for the time being, the Postmaster General held the petitioner liable to resume the service at any moment, &c.

The answer already made to the other portion of the appellant's claim answers these specifications also. The execution of the contract had become impossible by reason of the acts of the ~~king~~'s enemies, by reason of the ouster of the United States from its actual sovereignty over the territory through which the claimant's mail routes ran; had become so April 15th, while the appellant was paid to June 1, 1861.

This suspension, thus caused, cannot be held to be a suspension by the Postmaster General, such as would give rise to a claim for one month's pay. Whether or not this suspension may of itself have operated as a final release of the contractor from his obligation to complete his contract, was not the duty of the Postmaster General finally to determine. It was proper for that officer to decline to decide that question against his principal, the United States, as he did, by refusing formally to release the contractor from the obligations of his contracts.

E. R. HOAR,
Attorney General.

Supreme Court of the United States.

DECEMBER TERM, 1868.—No. 144.

JOHN E. REESIDE, Appellant,

versus

THE UNITED STATES, Appellee.

T. J. D. FULLER,
For Appellant.

M'GILL & WITHEROW, PRINTERS.

Supreme Court of the United States.

No. 144.

JOHN E. REESIDE, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

This case comes before the court on an appeal by the petitioner, from the judgment of the Court of Claims; that court being equally divided in opinion upon the right of the claimant to recover, holding, that the claimant had no cause of action; consequently the judgment of the court below was, that the petition "*be dismissed.*" The question of the *measure* or *rate* of damages the petitioner might be entitled to receive, was not, of course, considered by the court.

The claimant held valuable contracts with the Post Office Department, which had been satisfactorily executed, for the period of two years and eleven months. They had a period of thirteen months longer duration, when their further execution was *suspended* by order of the Postmaster General. And the question here presented is, whether the claimant is entitled to compensation, and if so, the measure of it, or the principle upon which his compensation shall be adjusted.

1. Apart from the supposed effect of the act of July 28, 1861, (vol. 12, p. 177,) and the war which ensued, there would be no embarrassment in determining the question involved. These two considerations laid out of the case, it would then be the ordinary one of a valid contract, being put an end to, by one of the contracting parties, and the other contracting party, being in no fault, would be entitled to recover the profits he would have realized, provided the contract had not been broken.

The adjudicated cases relied upon to support this position, are, Philad., Balt. & Wil. R. R. Co. *vs.* Howard, (13 How., p.

307;) 2 Curtis C. C. R., (p. 28;) 8 Barbour N. Y. Rep., (p. 423;) Clark *vs.* Marsiglia, (1 Denio R., (p. 317.)

See, also, J. Scarburgh's Opinion, Ct. of Claims, 2d Sess. 36th Congress, in case of Romons & Armstrong *vs.* United States.

2. The contract was not determined by the rebellion. Intercourse, inland, between the loyal and insurrectionary States did not cease and become illegal until the date of the President's proclamation, of August 16, 1861. If the state of war is relied upon by the defence as an excuse or justification for putting an end to the contract, it cannot be invoked until that time, and the petitioner is entitled to his mail pay to that day, at all events.

The Postmaster General assumed to act, under the discretion imposed upon him, by the act of February 28, 1861. The act is in these words:

"That whenever, in the opinion of the Postmaster General, the postal service cannot be safely continued, or the post-office revenues collected, or the postal laws maintained on any post route, by reason of any cause whatever, the Postmaster General is hereby authorized to *discontinue* the postal service on such route, or any part thereof and any post offices thereon, till the same can be safely restored, and shall report his action to Congress."

The Postmaster General might have *discontinued* the service under this act, or he might, under the contract, have annulled the service and put an end to the contract. But he did neither. He did not *annul* the contract. He did not *discontinue* the contract. *He simply suspended service for the time being, leaving the contract unimpaired and in full force.*

He notified the claimant that he would be held responsible, and be ordered to renew the same whenever, in the opinion of the Postmaster General, it should be safe to do so.

4. There is a plain and palpable distinction between *contract* and *service* in the Post-Office laws. The latter may exist without the former.

Neither the act of February 28, 1861, nor the order of the Postmaster General under it, in terms proposes to act upon or abrogate the *contracts*.

The law speaks of postal service, post-office revenues, postal laws, and post offices, which may be discontinued "*until the same may safely be restored.*"

The act of February 28, 1861, should be construed in connection with other existing statutes. By the act of March 3, 1825, (Brightley's Digest, p. 759, sec. 1,) among the duties of the Postmaster General enumerated, it is enacted "*he shall provide for the carriage of the mail on all post-roads that are or may be established by law.*" This is mandatory. It does not leave the matter discretionary with him. The extent and force of the act of 1861 is to give the Postmaster General discretion to discontinue postal service on post-roads where, under the old law, he had none!! By the 48th section (Brightley's Digest, p. 766,) it is further made the duty of the Postmaster General to report to Congress any obstructions on post-roads, that new ones may be established. It is, therefore, denied that Congress intended by the act of February, 1861, in any manner, to affect existing contracts, or to amend them.

5. If the Postmaster General had given notice to terminate the contract, claiming for himself that right under the provision in the contract, upon payment of one month's extra pay, it might be contended, perhaps with some plausibility, that he had the right to do so. But as he did not claim to act under that clause, the claimant is not bound to accept that sum as the measure of his arrearages.

In the case of Clark *vs.* Marsiglia, (1 Denio R., p. 317,) a party who was employed to do certain mechanical work at a price agreed upon, and had commenced it, was afterwards forbidden to proceed with its execution: it was held, that the true measure of damages was full compensation for his past performance, and indemnity for his loss in respect to the part left unfinised.

So here, as the suspension might at any moment have been removed, and the contractor was required to hold himself in a state of readiness, to resume the same when requested, he should receive the full measure of compensation agreed to be paid him.

The contractor had no notice whatever of the intention of the Government to suspend the same—no time to remove his property, or to make any shift for himself. But his pay is suddenly stopped, and he is held liable for the remaining period his contract had to run to resume at the pleasure of the Department. Under this state of facts, as appears by the record, why should he not receive his full contract price for the thirteen months?

But it is said, the United States have a dual character; that of contractor and that of sovereign. Admit it, for the sake

of the argument. As contractor, is it not bound by the law of contracts, as applicable to private persons? Its sovereign character cannot shield its contracting character from just liability. While a contracting party could not excuse himself from the performance of his contracts by the act of the sovereign power, neither can the sovereign power shield itself from the obligation of its lawful contracts.

If the interpretation given of the law of the 28th of February, 1861, is the correct one, that it does not of its own force and terms terminate the contract, and that it was designed merely for the purpose of conferring a discretion upon the Postmaster General where none existed before, then the act may be laid out of the case, as of no influence upon the question at issue, and the relative rights of the parties stand as though the act had no existence.

The seventh special finding by the court is rather an inference of law, than of fact, from the general history of the times; which this court can take notice of, as well as the court below.

The Postmaster General must have regarded the disturbed condition of the country, at the date of his order, as temporary, else, he would not have declined, upon the request of Reeside, to terminate the contract. It is manifest, or clearly inferable, that he thought within the thirteen months the condition of public affairs would be such that the postal service would be resumed on the routes.

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6. The execution of the contract did not become impossible by the act of the sovereign power, until that power declared all intercourse between the loyal and disloyal States illegal, which was the 16th of August, 1861; and the plaintiff may be regarded as entitled to pay to that time.

7. The remaining question to be considered is, the rights and liabilities of the parties under the following clause in the contract:

"It is hereby stipulated and agreed, &c., &c., among other things, that the Postmaster General may discontinue or curtail the service in whole or in part, in order to place on the route a greater degree of service, *or whenever the public interests requires such discontinuance or curtailment for any other cause, he allowing one month's extra pay on the amount of service dispensed with.*"

Under this head, the opinions of the Attorneys General are cited from vols. 4, p. 141; do. 5, p. 246; do. 6, p. 516; do. 7, p. 487.

The opinion in the 6th vol., p. 516, June 7, 1854, and authorities cited, elaborates this case very fully.

The claimant, having partially performed his contract, and ready to perform the balance of it, without his fault the service is discontinued, or, more properly speaking, SUSPENDED, for an indefinite period of time, he is clearly entitled to the one month's extra pay.

The claimant was in no fault; the contract was suspended or put an end to by the other party. It is difficult to perceive why here was not at least a technical breach of the contract.

The question of the right or authority to terminate the contract is one thing. The question or right of compensation arising thereon, may be quite another. If the plaintiff was in no fault, and if the law had not, *ipso facto*, terminated the contract before the 27th of May, 1861, there was a technical breach of it, and the law would award some damage.

It was at most an anticipatory order. Neither the proclamations of the 15th, 19th, 29th April, made intercourse inland between the insurrectionary and Federal States unlawful. Intercourse did not become unlawful before August 16, 1861. The right to compensation was a vested right under the contract, and the repeal or change of the law would not defeat the plaintiff's claim. (See 2 Wallace, p. 450.)

The court say: "When a right has arisen upon a contract, or a transaction in the nature of a contract, authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right, which stands independent of the statute."

The Government cannot invoke subsequent events as an excuse for the suspension of the contract. It must abide by its own action at the time of the Postmaster General's decision.

Again, a contractor residing in the city of Washington, performing mail service in the States of Mississippi and Arkansas, which would require twenty days' time to visit the routes, should have a reasonable notice of the discontinuance of the service, to remove or dispose of his property.

1. The claimant is entitled to recover the actual damage he sustained by the *suspension* of his contract.

2. At the time of the suspension, there was no legal interruption to the further performance of the contract.

3. Claimant is entitled to his month's extra pay at all events.

T. J. D. FULLER.